IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 7 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. CHANDAN METAL PRODUCTS PVT.LTD. - Applicant(s)
Versus
THE STATE OF GUJARAT - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant
MR SUNEET S. SHAH GOVERNMENT PLEADER for Opponent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 11/10/2006

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Gujarat Sales Tax Tribunal at Ahmedabad has referred the following question for opinion of this Court under Section-69 of the Gujarat Sales Act, 1969, which arises out of Appeal No. 33/91 decided by the Tribunal on 14.3.93.

> “Whether on the facts and circumstances of the case, the Gujarat Sales Tax Tribunal is right in holding that safe deposit lockers are not articles of furniture as referred to in entry 67 of Schedule IIA of the Gujarat Sales Tax Act, 1969 and therefore, not entitled to concessional rate of Tax under entry 212 of Government Notification under Section 49[2] of the Act or whether it falls under entry 13 of Schedule III?”

2. The facts in nutshell are, that the applicant assessee, who is engaged in the business of manufacture and sale of metal furniture and security equipments, is registered under the Companies act, 1956 and is also registered under the Gujarat Sales Tax Act and Central Sales Tax

Act. During course of their business, they had sold safe deposit vault to their customer, so also had sold fire and burglar resisting cabinet. The items were sold under bill no. 30866 dated 27.3.91 and bill no. 30721 dated 18.1.91. The said applicant made an application on 30th July, 1991 under Section-62 of the Gujarat Sales Tax Act, 1969, seeking opinion of the Commissioner of Sales Tax on the following question.

> "[1] What is the rate of tax on the safe deposit vault sold by them vide their bill no. 30866 dated 27.3.91?
>
> [2] What is the rate of tax on the fire and burglar resisting record cabinet sold by them vide their bill no. 30721, dated 18.1.91?"

The matter was heard finally and decided by the Deputy Sales Tax Commissioner [Legal]. It was held by the said Deputy Sales Tax

Commissioner that the fire and burglar resisting record cabinet with keys and safe deposit lockers are liable to be taxed under item no.13 of Schedule-III appended to the Gujarat Sales Tax Act, 1969 and additional tax shall be levied as per the provisions of law.

3. Being aggrieved by the said order dated 25.10.91, passed by the Deputy Sales Tax Commissioner [Legal], the assessee filed Appeal No. 33/91 before the Gujarat Sales Tax Tribunal at Ahmedabad. It was the contention of the applicant before the Tribunal that the fire and burglary resisting record cabinet and the safe deposit lockers would be covered by entry no. 67 of Schedule II appended to the Act and they would be liable to be taxed at concessional rate of tax under entry no. 212 of the Government Notification issued under Section 49[2] of the Act. It was contended before the Tribunal that the entry no.67 which relates to furniture of all kinds, furniture upholstered and skeletons of any of them would cover fire and burglary

resisting cabinet and safe deposit lockers. After considering the arguments of both the sides, the learned Tribunal observed that so far as the articles known as safe deposit locker were concerned, those would not come within the sweep of entry no.67 as they were specially fabricated for banks or institutions which were doing the business of giving the same on hire. However, it held that the fire and burglary ressistent cabinet would be covered under entry no. 67 of Schedule IIA.

4. The assessee, being aggrieved by part of the order, made an application under Section-69 of the Act for making a Reference to this Court, the Tribunal allowed the application and did make Reference on the above-referred question.

5. Shri Tanvish U. Bhatt, learned counsel for the applicant submits that in absence of the definition of the word “furniture” in the Gujarat Sales Tax Act, dictionary meaning of the word must be taken into consideration, or in the alternative, the word “furniture” as understood by the common public in its common parlance

should be considered. Placing reliance upon a Division Bench judgment of this Court in the matter of **Chandan Metal Products Pvt. Ltd. v. State of Gujarat [23 STC 29],** wherein shelving racks and binstaks were held to be furniture, he submitted that if such things could be accepted to be furniture and as the safe deposit lockers are also articles of convenience, then, the goods would fall under entry no.67 of Schedule IIA. He has also referred to the meaning of the word “furniture” in different dictionaries. He submits that “furniture” would not only mean something which is ordinarily understood to be furniture, but would also include in its sweep, articles of convenience or decoration used for the purpose of furnishing a place of business or office.

6. On the other hand, learned counsel Mr. Suneet S. Shah, learned Government Pleader for the State, placing reliance upon the dictionary meanings and different changes which were effected in different entries relating to furniture, submitted that the items should be understood in

their true perspective and not only as article of convenience or decoration. He submits that the words should be interpreted looking to the context and not simply on the strength of the dictionary meaning. He also submits that the judgment in the matter of Chandan Metal Products Pvt. Ltd.[supra] was on altogether different facts, the same would not apply to the facts of the present case.

7. We have heard the parties at length. Before we come to the controversy in question, we feel duty bound to refer to entries which relate to furniture and which were amended from time to time. In the matter of Chandan Metal Products Pvt. Ltd.[supra], the High Court was concerned with entry no. 44 in Schedule-C to the Bombay Sales Tax Act, 1959, which read as under:-

> “Iron and steel safes, almirahs and furniture and upholstered furniture”.

7. It is to be noted that the iron and steel safes were included in entry no. 44 as a distinct

item. Safe made of iron and/or steel in its every form, whether it is fire resistant or burglary proof would be a part of entry no.44. In entry no. 44, iron and steel safes were distinct items from almirahs and furniture and upholstered furniture.

8. Entry no. 67 as it originally stood was to read as under:-

Wooden and cane furniture [other than upholstered furniture] and skeletons thereof excluding wooden cradles [Ghodia] and wooden frames of charpai [Khatla].	Twelve paisee in the rupee.	Twelve paisee in the rupee.

At the material time, entry no. 73 read as under:

Furniture of all kinds, upholstered furniture and skeletons of any of hem but excluding- [i] wooden and cane furniture and skeletons thereof, and [ii] wooden cradles [ghodia] and frames of charpai [khatla]	Fifteen paise in the rupee.	Fifteen paise in the rupee.

Entry no. 73 came to be deleted by the Gujarat Act No. 14 of 1986 with effect from 1.4.86 and entry no. 67 was also substituted by Gujarat Act

No. 14 of 1986 with effect from 1.4.86. The said entry, as amended reads as under:-

Furniture of all kinds, upholstered furniture and skeletons of any of any of them.	Ten paise in the rupee.	Ten paise in the rupee.

9. It would be noteworthy that the unsubstituted entry no. 67 was referring to wooden and cane furniture [other than upholstered furniture] and skeletons thereof excluding wooden cradles [Ghodia] and wooden frames of charpai [Khatla], while entry no. 73 was referring to furniture of all kinds, upholstered furniture and skeletons of any of them but excluding; [i] wooden and cane furniture and skeletons thereof, and [ii]wooden cradles[ghodia] and frames of charpai[khatla]. Comparison of the original entries would show that the entries no. 67 and 73 were mutually exclusive, what was falling in entry no. 67 was excluded from entry no. 73 and vice versa. Since the deletion of entry no. 73 and substitution of entry no. 67, furniture of all kinds, upholstered furniture and skeletons

of any of those would fall under entry no. 67 with effect from 1.4.86.

10. It is worth noting that the words “iron and steel safes” which were an integral part of entry no. 44 in Schedule-C to the Bombay Sales Tax Act, 1959, were not included in unamended entries or amended entry no.67.

11. In the matter of Chandan Metal Products Pvt. Ltd. [supra] the Court observed that as the Act does not define the word “furniture”, it would be proper to refer to the dictionary meanings. The Court observed that according to the Webster's Dictionary, Second Edition, “furniture” would mean “articles of convenience or decoration used to furnish a house.”

12. The Court also observed that according to the Shorter Oxford English Dictionary, the word “furniture” would mean “movable articles in a dwelling house, place of business or a public building.” The Court also observed that the word “furnish” would mean “to fit up [an apartment, a house] with all that is requisite, including movable furniture, which is now the predominant

notion." Applying the dictionary meaning, the Court observed that the shelving racks and binstaks manufactured from iron and steel and sold by a company manufacturing iron and steel products, component parts and accessories would come within the sweep of iron and steel furniture within the meaning of entry no. 44H of Schedule-C to the Bombay Sales Tax Act, 1959. The said judgment has been referred by the Supreme Court in the matter of **New Chelur Manufacturers [P] Ltd. Vs. Collector of Central Excise [(1998) 9 SCC 140]**. In the said matter, the Supreme Court observed that according to dictionaries, the expression "furniture" has a wide connotation and includes all those articles which are used in a dwelling house or a place of business and commerce or a public building to furnish the establishment. In the said matter also, parts manufactured by the said appellants were used for erecting shelves in industrial establishment and since those were taken to the ceiling height, ladders and catwalks had to be erected for the purposes of

approaching those shelves used for storing or displaying industrial stocks. The Supreme Court observed that the parts other than slotted angles and channels used in the erection of shelves and storage system would fall within the meaning of “parts of steel in the preparation of steel furniture” under Tariff Item No.40 of Central Excise & Sales Tax Act, 1994, but not the slotted angles and channels made of steel which fall in the exclusion clause of Item 40.

13. In the matter of **Oriental Insurance Co. Ltd. v. Samayanallur Primary Agricultural Coop. Bank [(1999) 8 SCC 543]**, the dispute before the Apex Court was that whether Accountant's box would be included within the definition of “safe” for the purposes of the insurance policy. In the said matter, the insurance policy provided that the insurance company would be liable in case of theft if all valuables were kept in “burglary resisting safes” when the premises are locked. The Supreme Court observed that there was no necessity of referring to the dictionary for understanding the meaning of word “safe”, which

the parties, in that case, had understood while submitting proposal and accepting the insurance policy. The Court further observed that the Cashier's Box could not be equated with the safe within the meaning of the insurance policy. We are referring to this judgment for the simple reason that there could always be a difference between the Cashier's cash box and burglary proof safe or the safe deposit locker. The question still is that whether safe deposit locker can be termed to be furniture and whether it is an article of convenience or decoration.

14. In the matter of Chandan Metal Products Pvt. Ltd.[supra], this Court has held that all articles of convenience or decoration used for the purposes of furnishing a place of business or an office are articles of furniture. From the said judgment of this Court, it would clearly appear that the article may be an article of convenience or decoration which is used for the purpose of furnishing a place of business or office. If it is not an article for the purpose

of furnishing the place of business or office, then, it would be not falling within the definition or under the meaning of furniture.

15. This Court, in the matter of Chandan Metal Products Pvt. Ltd.[supra] never said that the safe deposit locker would be an article of convenience or decoration, but the Court simply observed that in view of the dictionary meaning and the word “furniture” that all articles of convenience or decoration used for the purpose of furnishing a place of business or an office would be articles of furniture.

16. According to Black's Law Dictionary, 6th Edition, “furniture” would include “that which furnishes or with which anything is furnished or supplied; whatever must be supplied to a house, a room, place of business, or public building or the like, to make it habitable, convenient, or agreeable; goods, vessels, utensils, and other appendages necessary or convenient for housekeeping; whatever is added to the interior of a house or apartment, or use or convenience.”

17. There is a presumption that words are used in all Acts of Parliament correctly and exactly and not loosely and inexactly. But in applying the rule, secondary meaning, that is, less common meaning of a word should not be confounded with its loose meaning. Preference for secondary meaning of a word, when the purpose of a statute in which it is used points to that meaning is permissible and adoption of that course does not offend the rule that preference should not be given to loose meaning.

18. The Supreme Court in the matter of **Union of India v.Garvare Nylons Ltd. [AIR 1996 SC 3509],** has observed; “as a necessary consequence of the principle that words are understood in their ordinary or natural meaning in relation to the subject matter, in legislation relating to a particular trade, business, profession, art or science, words having a special meaning in that context are understood in that sense. Such a special meaning is called the technical meaning to distinguish it from the more common meaning that the word may have.”

19. We would be justified in referring to entry no.44 of Schedule-C to the Bombay Sales Tax, 1959, which was referring to iron and steel safes and the original entries no. 67 and 73 of Schedule IIA appended to the Gujarat Sales Tax Act. In the latter items, words “iron and steel safes” were not included. If the legislature had purposefully avoided inclusion of a particular item in the specific entries, then, it is to be held that such items by no interpretation would be deemed to be included. Endeavour of the learned counsel for the assessee was to convince us that as the safe deposit lockers are articles of convenience or decoration, they would come within the dictionary meaning of the word “furniture.” In our opinion, it would not be correct.

20. When an Act is passed with reference to a particular trade, business or transaction and the words are used, which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it, then, the words are to be considered as

having that particular meaning. The principle would apply with its extra vigour in construing the words in taxing statute which describes the goods that are liable to taxation.

21. In the matter of **Indian Aluminium Cables Ltd. v. Union of India [(1985) 3 SCC 284]**, the Supreme Court observed: it has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff Schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. In the matter of **G.S. Auto International Ltd. v. Collector of Central Excise [AIR 2003 SC 986],** the Apex Court observed that the true test for classification was the test of commercial identity and not the functional test. It needs to be ascertained as to how the goods in question are referred to in the market by those who deal with them, be it for the purposes of selling, purchasing or otherwise.

22. In the matter of **Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate [AIR 1958 SC 353]**, the Apex Court observed that the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.

23. Entry no. 67 as it stands simply reads “furniture of all kinds, upholstered furniture and skeletons of any of them.” The intention of the Legislature by not including the words “safes of iron and steel” would make it abundantly clear that the said items and in particular, safe deposit locker would not be a part of furniture of any kind.

24. On application of the principles laid down by the Apex Court when we examine the word “safe

deposit locker" or "locker", then, we must immediately say that the above items are not treated or considered as furniture.. The "locker" in trade, business, profession or Art or science is never treated as furniture. It has a different identity and it is understood as a different item from furniture. The technical meaning of "locker" would be difficult and it would not come within the sweep of furniture. The word "locker" has to be construed in the sense in which it is understood in the trade or business by the dealer and consumer. Even if "locker" is presumed to be an article of convenience or decoration, then too, the test of commercial identity and not the functional test has to be applied. We must say that "locker" has a different commercial identity and can't be included in "furniture" simply on the functional test. A "locker" is not referred to as "furniture" in the market by those who deal with it, be it for purposes of selling, purchasing or otherwise.

25. We must hold that there is no doubt about the

meaning of the word “locker” but assuming there is some other meaning, then too, we must further hold that it is a different commercial item because that meaning alone would best harmonise with the subject of the enactment and the object which the Legislature has in view, specially by not including it in the original entries no. 67/73 or amended entry no.67.

26. Examining from any angle, whether legally or factually, we are unable to hold that safe deposit locker would be an article of convenience or decoration, it is not an article of convenience for a bank, because, it leases out it as part of its business and the bank does not use it as article of decoration, because it is not exhibited to the common public. A person who holds a locker would only be entitled to enter the place where, lockers are kept. On the legal foundation, we are unable to hold that the safe deposit lockers would come within the sweep of “furniture”. The question referred to this Court is answered in the affirmative and we hold that the Gujarat Sales Tax Tribunal was right in

holding that safe deposit lockers are not articles of furniture as referred to in entry no. 67 of Schedule IIA of the Gujarat Sales Tax Act, 1969 and, therefore, not entitled to concessional rate of tax under entry no. 212 of Government Notification under Section 49[2] of the Act and that it would fall under entry no.13 of Schedule III.

27.The Reference is answered accordingly. No costs.

[R.S. GARG, J.]

[D.H. WAGHELA, J.]

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